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EXHIBIT 6
DATE 2-13-15
HB 438

February 12, 2015

RE: Oppose HB 438: The healthcare review committee bill

Dear Chairman Wittich and Members of the Human Services Committee:

Thank you for allowing me to provide some information to you today.

I personally have gone through two steps of the process that this bill would cover:

- Development of a new profession in statute: I helped usher in massage therapy licensure and
- Rulemaking: I served on the state regulatory board for massage therapy (I ended my tenure as Chair) and worked intensively in the rulemaking process.

I have also been very involved in scope of practice and unlicensed practice issues specific to the practice of medicine and its impact on alternative and complementary health care for many years. Given all of the above, I think I am qualified to provide a little insight into the bill.

I oppose this bill for many reasons:

The current process works just fine: The bill is an unnecessary duplication of services already authorized by law:

- **MCA 2-8-402** – requires a letter of intent to accompany a bill draft request to set up a new board. In fact, **MCA 2-8 Part 4** outlines the procedure for creating new professional and occupational boards and the review of existing boards.
- The Legislature makes statutes outlining scope of practice.
- **MCA 37-1-107(1)(c)** – requires that the department set up meetings between boards that “have issues of joint concern or related jurisdiction with each other” (aka overlapping scope of practices).
- **MCA 5-5-223** – authorizes the Economic Affairs Interim Committee to do rule review.

No board/committee should be in another board’s business: Scopes overlap, but that does not mean that the act performed by one profession is the same as another.

- Whoever said that professions should be completely distinct is blowing smoke. Trying to carve out professions with no overlap is impossible. This bill will put the boards in each other’s business.
- As long as a board develops the proper rules to protect the public to ensure its safe practice, if the scope of a profession is broad enough to include it, then it should be up to the individual board to regulate it.
- Once a scope of practice is developed by you, the Legislature, the governing Board should be free to make rules it deems fit, as long as the rule does not exceed the scope of the law. After all, there is rule review by the legislative branch (see above).

Allowing this committee to review rules, particularly retroactively, usurps the power of Legislative review.

It undermines the role of boards, allows one board to get in the business of another, undermines the Legislative committee review process, and transfers that power to the associations.

The Montana Medical Association (MMA) will have a seat on every single committee appointed – mixing trade associations with governmental agencies and giving them governmental power – all paid for by the licensees.

While the group is not mentioned by name in the bill, this is the reality. The scope of practice of medicine is basically “if you do something to enhance someone’s health you’re practicing medicine.” They overlap with everyone. And with the proviso that a trade association must approve a member, this gives the MMA unprecedented power. Given past history of the Board of Medical Examiners (BME) with Chiropractic (they actually had to get a referendum passed

to become a profession) and their viewpoint on alternative and complementary health care, this is not good. The bill makes the MMA and the BME the gatekeeper for all the other professions, with the physical therapists close behind (their scope is equally as broad). That is really supposed to be your job.

The bill muddies the Board / Department relationship even further.

The Department is supposed to only provide administrative support, but on more than one occasion I had "discussions" with Department staff over what decisions were "administrative" and which ones belonged to the Board. From personal experience, the dividing line is very, very murky. This bill muddies that relationship by giving undue power to the Department to determine a profession's (aka Board's) fate. While I trust Commissioner Bucy to do the right thing, I do not believe that it is good to give the Department that much power.

The results of the committee's findings will be ignored, because the committee will be viewed as "stacked".

- The profession at issue is already in the minority on the committee, with the MMA/BME and public members already outvoting them 4 to 2. How so? As someone who sat on a board with public members, I've seen how public members are swayed, not by the merits of an argument, but by the credentials of who is making the argument.
- The minority will argue that the majority is biased and unfair – and rightly so.

In short, it's not a fair process.

This review committee usurps the processes already in place. It does nothing to enhance them and only further politicizes the process. Professions at odds already have to talk to each other because you (the Legislature) will not pass legislation without dialogue between the parties. And if one party refuses to cooperate, you can see through that and pass legislation anyway. That is how our massage therapy bill passed. ***I maintain that my profession would not be licensed today if such a review committee existed when we passed our legislation.***

In conclusion, as someone who has been in the midst of scope of practice issues, this bill is unnecessary and unneeded. I would greatly appreciate a Do NOT pass.

Thank you.

Sincerely,



Deborah A. Kimmet